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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 RUSSELL B. MORRISON,

8 Plaintiff,

9 v.

10 SAM'S WEST, INC.,

11 Defendant.  
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Case No. 2:18-cv-00353-RFB-BNW

**ORDER**

13 Presently before the court plaintiff Russell B. Morrison's individual proposal for an  
14 adverse inference instruction (ECF Nos. 61), filed on September 19, 2019.

15 Also before the court is defendant Sam's West, Inc.'s motion to strike (ECF No. 62)  
16 Morrison's individual proposal for an adverse inference instruction, filed on September 19, 2019.  
17 Morrison filed a response (ECF No. 64) on October 3, 2019.

18 At the hearing on September 5, 2019, the court found that Sam's West failed to preserve  
19 video footage captured after the incident and ordered that an adverse inference instruction would  
20 be given to the jury as a sanction for Sam's West's failure to preserve the video. (Mins. of  
21 Proceedings (ECF No. 60).) The court ordered the parties to meet and confer and to file a joint  
22 proposed adverse inference instruction for the court's consideration. (*Id.*) The parties were  
23 unable to reach an agreement, and plaintiff Russell B. Morrison filed an individual proposal.  
24 Sam's West thereafter moved to strike the unilateral proposal.

25 The court would have expected the experienced and professional counsel on this case to  
26 engage in the meet-and-confer process and submit a joint proposal without court intervention.  
27 Regardless, to move the case forward, the court will not order an additional meet-and-confer  
28 conference on this issue at this time. The court finds that the jury should be instructed that it may

1 infer that the destroyed video would have shown Morrison entering the restroom after his alleged  
2 fall, exiting the restroom, and interacting with an individual near the scene of the alleged fall. The  
3 exact phrasing of the jury instruction will be determined by the United States district judge  
4 assigned to this case at the time the parties settle the jury instructions.

5 IT IS THEREFORE ORDERED that the jury will receive an adverse inference instruction  
6 with respect to the failure to preserve video surveillance as stated in this order.

7 IT IS FURTHER ORDERED that defendant Sam's West, Inc.'s motion to strike (ECF  
8 No. 62) is DENIED.

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10 DATED: October 16, 2019

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BRENDA WEKSLER  
14 UNITED STATES MAGISTRATE JUDGE  
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